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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/664,806

Filing Date: September 17, 2003

Appellant(s): SEARFOSS, TIMOTHY K.

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Timothy Engling  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 1/11/08 appealing from the Office action mailed 1/10/06.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

6,513,856	SWANSON et al.	2-2003
4,505,512	SCHMEICHEL et al.	3-1985
DE10120442	TOMAT	10-2002

6,206,449	SEARFOSS	3-2001
5,791,714	HALL, Jr.	8-1998
6,588,826	MUIRHEAD	7-2003

#### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

##### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-5, 7-8, and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Swanson et al.

Swanson et al. (6,513,856) disclose a rail 46 for a top of a wall 15 of a trailer 16, the rail comprising: a body adapted to engage the top of the wall, the body having a concave surface (Figure 6) adapted to receive a cover reel 22.

With regard to claim 2, the concave surface faces away from the trailer.

With regard to claim 3, at least one leg (Figure 6) is connected to the body.

With regard to claim 4, the at least one leg is adapted to engage the top of the wall.

With regard to claim 7, the body includes an opening (generally formed by the concave surface) adapted to anchor a cover 20.

With regard to claim 8, the body extends at least a majority of a length of the wall of the trailer (Figure 1).

For claims 5 and 11, it should be noted that the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process (MPEP 2113).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmeichel et al. (4,505,512) in view of DE '442.

Schmeichel et al. disclose the claimed invention except for a plurality of ribs.

DE '442 teaches the desirability of a plurality of ribs for stiffening and strengthening.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a plurality of ribs as taught by DE '422 upon the body of the rail of Schmeichel et al. in order to stiffen and strengthen the rail.

5. Claims 12-16, 18-19, 22-27, 29-30, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swanson et al. in view of Scarfoss (6,206,449).

For claim 12, Swanson et al. disclose an apparatus for extending and retracting a cover 20 over a trailer 16, the apparatus comprising: a base 28 (Figures 2-3) pivotably connected to the trailer; an extension 26 connected to the cover and connected to the base; and a rail 46 for a top of a wall 15 of the trailer 16, the rail 46 including a body adapted to engage the top of the wall, the body having a concave surface (Figure 6) adapted to receive a cover reel 22.

For claim 23, Swanson et al. disclose an apparatus for extending and retracting a cover 20 over a trailer 16, the apparatus comprising: a base 28 pivotably connected to the trailer; an extension 26 connected to the cover and connected to the base; a reel 22 connected to the extension; a motor 25 mounted on the extension and drivingly engaged with the reel to selectively extend and retract the cover over the trailer; and a rail 46 for a top of a wall 15 of the trailer 16, the rail 46 including a body adapted to engage the top of the wall, the body having a concave surface (Figure 6) adapted to receive the reel.

With regard to claims 13 and 24, the concave surface faces away from the trailer.

With regard to claims 14 and 25, at least one leg (Figure 6) is connected to the body.

With regard to claims 15 and 26, the at least one leg is adapted to engage the top of the wall.

With regard to claims 18 and 29, the body includes an opening (generally formed by the concave surface) adapted to anchor a cover 20.

With regard to claims 19 and 30, the body extends at least a majority of a length of the wall of the trailer (Figure 1).

For claims 16, 22, 27, and 33, it should be noted that the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process (MPEP 2113).

Swanson et al. lack the extension being pivotably connected to the base.

Searfoss (6,206,449) teaches an apparatus for extending and retracting a cover over a trailer, the apparatus comprising: a base 24 pivotably connected to the trailer; and extension 26 connected to the cover and pivotably connected to the base; and a rail 58.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided an extension as taught by Searfoss that is pivotable to the base of Swanson et al. in order to provide the cover with more flexibility when moving between extended and retracted positions.

6. Claims 12, 17, 23, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swanson et al. in view of Schmeichel et al. (4,505,512).

Swanson et al. lack the body comprising a plurality of ribs.

Schmeichel et al. teach an apparatus for extending and retracting a cover over a trailer, the apparatus comprising: a rail 24 having a body (Fig. 4) with a plurality of ribs 44, 50, 52, 54.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a plurality of ribs as taught by Schmeichel et al. upon the rail of Swanson et al. in order to stiffen and strengthen the rail.

7. Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swanson et al. as applied to claim 1 above, and further in view of the well known prior art.

Swanson et al. lack the body of the rail being aluminum or a polymer.

The well known prior art (Hall, Jr. 5,791,714 and Muirhead 6,588,826) teaches aluminum and polymer materials for use with vehicles since these materials exhibit advantageous properties in that they can be lightweight, anticorrosive, and durable.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have created an aluminum or polymer body for the rail of Swanson et al. since the well known prior art teaches advantageous characteristics of these materials for use in a similar environment.

8. Claims 20-21 and 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swanson et al. as applied to claims 12 and 23, above, respectively, and further in view of the well known prior art.

Swanson et al. lack the body of the rail being aluminum or a polymer.

The well known prior art (Hall, Jr. 5,791,714 and Muirhead 6,588,826) teaches aluminum and polymer materials for use with vehicles since these materials exhibit advantageous properties in that they can be lightweight, anticorrosive, and durable.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have created an aluminum or polymer body for the rail of Swanson et al. since the well known prior art teaches advantageous characteristics of these materials for use in a similar environment.

**(10) Response to Argument**

Applicant's arguments have been fully considered but they are not persuasive.

A) The applicant states that the ledge 46 of Swanson et al. is plainly situated some distance for the top of the wall. However, the examiner notes that the ledge 46 as broadly recited and interpreted is attached at the “top” of the trailer. The “top” of the trailer is being defined as the “uppermost region or part” or as “the upper end” (see Merriam Webster’s Collegiate Dictionary, 10<sup>th</sup> ed). Furthermore, when used as an adjective the “top” can mean “of, relating to, or being at the top”. Since the ledge 46 is situated at an upper region of the wall (as compared with a middle region and a lower region of the wall), the ledge 46 is believed to be at the top.

B) With regard to Schmeichel et al., it is again clear that the applicant does not believe the hooks 40 engage the top of the wall. The applicant states the hooks 40 are instead situated well below the top of the wall. The examiner disagrees and believes that as broadly recited and interpreted the hooks are indeed attached at the “top” of the trailer. The “top” of the trailer here again is being defined as the “uppermost region or part” or as “the upper end” (see Merriam Webster’s Collegiate Dictionary, 10<sup>th</sup> ed). Furthermore, when used as an adjective the “top” can mean “of, relating to, or being at the top”. Since the hooks 40 of Schmeichel et al. are situated at an upper region of the wall (as compared with a middle region and a lower region of the wall), the hooks 40 are believed to be at the top.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Hilary Gutman/

Primary Examiner, Art Unit 3612 /Dennis H. Pedder/

Primary Examiner, Art Unit 3612

Conferees:

D. Glenn Dayoan /dgd/